

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

FEB 11 2014

JULIA C. D. [Signature], CLERK  
BY: [Signature]  
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<b>RANDALL J. KEYSTONE,</b>	)	<b>CASE NO. 7:13CV00572</b>
	)	
<b>Plaintiff,</b>	)	
<b>v.</b>	)	<b>MEMORANDUM OPINION</b>
	)	
<b>P. SCARBERRY, <u>ET AL.</u>,</b>	)	<b>By: James C. Turk</b>
	)	<b>Senior United States District Judge</b>
<b>Defendant(s).</b>	)	

Randall J. Keystone, a Virginia inmate proceeding pro se, filed this civil rights action pursuant to 42 U.S.C. § 1983, alleging that prison officials at Red Onion State Prison are not providing him sufficient food, in violation of his constitutional rights. The court finds that the action must be summarily dismissed as frivolous.

Liberal construing Keystone's complaint, he alleges the following claims: (1) since Defendant Scarberry took over as Food Service Director at Red Onion, Keystone has not received sufficient food; (2) food service does not serve fruit as required under the "master menu," in violation of Virginia Department of Corrections ("VDOC") policy; (3) food service omits condiments from Keystone's meal tray "most of the time"; (4) food service does not serve biscuits and buns as required under the VDOC "master menu"; (5) food service serves inmates "improper sized and outdated cookies"; (6) food service serves "water[ed]down koolaids"; and (7) food service does not post weekly menus as required. See Compl. 6, 7, 10, 11. Keystone claims that, as a result of these problems with food service, he has suffered weight loss, headaches, constipation, and other discomforts, none of which has led him to seek medical treatment. His complaint also offers no indication that he has sought a medical evaluation of the

possible causes or health consequences of his weight loss or other symptoms.<sup>1</sup> As relief, he seeks \$48,000 in damages and injunctive relief ordering officials to follow the master menu and to provide meals totaling 2800 calories per day or more "ASAP." Compl. 14.

The court is required to dismiss any action or claim filed by a prisoner against a governmental entity or officer if the court determines the action or claim is frivolous, malicious, or fails to state a claim on which relief may be granted. 28 U.S.C. § 1915A(b)(1). Keystone's current claims and factual allegations are nearly identical to the claims and supporting allegations he raised in a prior § 1983 complaint, which the court summarily dismissed under § 1915A(b)(1) legally as frivolous. See Keystone v. Scarberry, Case No. 7:13CV00399 (W.D. Va. 2013). For the same reasons stated in the court's memorandum opinion in that prior case, Keystone's current complaint must also be summarily dismissed under § 1915A(b)(1) as frivolous. An appropriate order will enter this day.

The Clerk is directed to send copies of this memorandum opinion and accompanying order to plaintiff.

ENTER: This 11<sup>th</sup> day of February, 2014.

  
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Senior United States District Judge

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<sup>1</sup> Keystone asserts that medical records will show that he weighed 175 pounds in 2002, 156 pounds in November 2003, 135 in May 2011, and in December 2013, he weighed 29 and a half pounds. Keystone asserts that, at six feet tall, he is underweight. He does not, however, allege facts or provide any records indicating that he has sought a medical assessment regarding the possible causes or health consequences of the weight loss. Nor does Keystone allege that he has asked a medical professional for treatment of any of his other symptoms or for assessment of what may have caused them. Keystone's complaint indicates that the food service director admits that she has made occasional changes or substitutions to menu items, but denies that she has reduced the amount of food served.